

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6434 of 1999

WITH

SPECIAL CIVIL APPLICATIONS NO.7166/99 & 6990/99

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL ALKESHKUMAR KANTIBHAI

Versus

OIL & NATURAL GAS CORPORATION LTD.

Appearance:

MR TR MISHRA for Petitioners

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 01/10/1999

ORAL JUDGEMENT

1. These three petitions raise identical issue. A reply affidavit and rejoinder affidavit has been filed in Special Civil Application No.6434/99 and the same has been considered as the part of pleadings in all the three cases. The petitioners in all the three cases are

candidates who had undergone technical training at the Technical Training Institute managed and run by ONGC Ltd. as apprentices.

2. The grievance is about the recent recruitment process deployed by the respondents for recruiting junior technical assistants in different branches of trade. The principle contention of the petitioners in these petitions are that, in view of the decision of the Supreme Court in case of U.P. State Road Transport Corporation and another v/s U.P. Parivahan Nigam Shishukhs Berozgar Sangh and others [[1995] 2 SCC 1, the respondents were under an obligation to maintain a list of the persons trained yearwise and persons trained earlier are to be treated as senior to the persons trained later and other things being equal, a trained apprentices should be given preference over direct recruits in the matters of appointment. Amongst the trade apprentice preference shall be given to those who are senior. In spite of this, the respondents have recruited junior apprentices from later training period while leaving out the petitioners from consideration. They have not been invited for interview even. In the petitions, it was disclosed that the petitioners have been informed that they were not invited for interview because they have crossed the upper age limit to be eligible for consideration for appointment. To counter this objection, a plea has been taken that the respondents in past are giving appointments to such persons who have been much more older than the petitioners are. By way of illustrations, appointments of number of persons have been cited.

3. In reply, the respondents have not denied the principle governing the preferential consideration of trained apprentices for the purpose of offering appointments to the existing vacancies as and when the employer seeks to recruit new hands. However, it was asserted that none of the petitioners was eligible because of the age bar was after excluding the period for which they had undergone training. In respect of each illustration where appointments were given above age, the respondents have pointed out that such appointments have been given as per the existing rules / government directives requiring relaxation in age limit to the extent past services rendered in another department of the Government or of the public sector undertakings rendered by the said employees or for some other reasons. Learned counsel for the respondents also relied on the very same decision of apex Court referred to above for the purpose of urging that there being no specific rule

about relaxation of age, the trained apprentices are entitled to exclude the period for which they had undergone apprentice training for the purpose of determining their eligible age. However, on facts, it was stated that, as the petitioners were inspite of such relaxation not found within the prescribed age limit, they were not invited for interview and appointments could not be offered to them.

4. The petitioners in their rejoinder are not in a position to deny and did not deny that considering the maximum age prescribed in the advertisement viz. for general category 28 years, for OBC 31 years and for ST/SC candidates 33 years as on 30th April 1999, plus relaxable period of training as apprentices at the Institute, none of them qualify for being appointed. However, it was urged that relaxation granted earlier, to which reference was made in petition, in each case suffered from same vice and explanation about appointments given in the reply affidavit is erroneous on the basis of material relied on by the respondents by pointing out one defect or the other.

5. So far as the question of considering eligibility criterion is concerned, it is to be noticed that, in the case of U.P.S.R.T.C. and another [supra], it has been held that the person who had gone to the training of apprentice has as such no enforceable right to seek appointment, nor the said scheme of imparting apprentice training imbibes any promise to offer employment. However, keeping in view the spirit of the Apprentice Act, 1961 and to see that the benefit of time, money and energy spent on the trainees should not be lost and to meet the legitimate expectations of the trainees, the Court laid down the guidelines to be kept in mind while dealing with the claims of trainees to get the employment after successful completion of their training. The Court said that,

"In the background of what has been noted above,
we state that the following would be kept in mind
while dealing with the claim of trainees to get
employment after successful completion of their
training :-

[1] Other things being equal, a trained
apprentice should be given preference
over direct recruits.

[2] For this, a trainee would not be required
to get his name sponsored by any

employment exchange. The decision of this Court in Union of India v/s Hargopal would permit this.

[3] If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

[4] The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

6. From the aforesaid, it is clear that while the Court directives were to consider the claim of trained apprentice to get an appointment at the establishments imparting training on preferential basis over direct recruits on other things being equal, and instead of requisitioning the name from employment exchange concerned spelt out obligation on management of such training centre to maintain yearwise list of persons trained by it and to consider their cases in order of yearwise seniority, also to be maintained by the institution, for the purpose of determining preference inter-se amongst trainees. However, absolute preference was not intended to be granted. Firstly it was envisaged that the trained apprentices would get preference over direct recruits only in case of other things being equal. The Court was also alive to the fact that at the time of offering appointment to the apprentice trainees after their training, the question of age bar may arise. It was therefore stated in no uncertain terms that if age bar were to come in the way of trainees, the same should be relaxed in accordance relevant service rules, if any, in the service rules concerned. In the absence of service rules, the relaxation to the extent of period for which the apprentice had undergone training ought to be given. Obviously, the court has saved the operation of service rules governing the relaxation in the age limit while considering giving appointment on preferential basis to trained apprentice. In the absence of rules, the Supreme Court itself devised that in such event, the

relaxation in the maximum age would be given to the extent the period is spent in training. This was again reflected in the ultimate directives issued by Court. It was clearly stated once again in so far as the age requirement is concerned, the same shall be relaxed as indicated above. That is to say, in para 3 of the guidelines referred to above.

7. If that be so, on admitted position, when none of the petitioners could qualify because of the age bar as per the advertisement even after relaxation of age given to them to the extent of their period of apprenticeship, the petitioners cannot claim as a matter of right to be considered and appointed against the aforesaid judgement on preferential basis. It was not envisaged that even ineligible candidate be also considered.

8. In this connection, it will be further relevant to find that, in the memorandum dated 6/8/99, though little awkwardly worded, it has clearly been envisaged that the relaxation of age to be extended to the apprenticeship training will be given. This is in consonance with the guidelines of the Supreme Court in the aforesaid decision.

9. Coming to the question of hostile discrimination in the matter of not offering opportunity to the petitioners on the basis of being overage, suffice it to state that the respondents while admitted the instances where persons more aged than envisaged in memorandum were employed in past explained the deviation for cogent reasons. With reference to the relevant criterion which was operating at the period of such past appointments for the purpose of showing that the respondents have acted in accordance with the prevailing criterion in offering appointments of persons above age referred to in the memorandum by excluding certain period of past service. Most of such appointments had been given prior to 1991. The petition is not to find fault with actual implementation of the guidelines computing the qualifying age in past. The only question germane is to consider whether action of respondents in giving appointment to the persons above the eligible age propagated was founded on some intelligible rational basis or without any basis so as not to call the petitioners who have otherwise become overage to fall in the scheme of Article 14 on the ground of hostile discrimination. The purport of this petition is not to examine the validity of earlier appointments and to find whether they were in consonance with like operative directives at the relevant time or not. I am satisfied that no case of hostile

discrimination is made out. Once the respondents have able to show that they have acted in a particular manner as per the provisions prevailing at the relevant time on the bonafide belief about governing requirement. The existence of the relevant exemptions or provisions at the relevant time are not in dispute. The petitioner now wants to raise grounds that at the relevant time, the respondents have not acted within those precincts. Validity of those appointments are not subject matter of this petition.

10. Lastly, it was contended by Mr. Mishra, learned counsel for the petitioner that recently the government has issued notification extending the age of recruitment by 2 years in all categories and if that is to be applied to, some of the petitioners may become eligible. Learned counsel for the respondents Mr. Mehta denies that the respondents have received any such government directives. Be that as it may. Necessary facts to that effect have not been pleaded as they apply to individual cases, nor any such plea has been taken in the petition to lay foundation for enquiring into these facts.

9. As I find no merits in all the contentions raised by the learned counsel for the petitioner, all the three petitions fail and are hereby dismissed. Interim order stands vacated. Notice discharged. No orders as to costs.

10. Prayer for extending interim relief is refused.

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